IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 243 OF 2004

Arihant Printers ... Petitioner

Vs.

Shri. Sachin D. Raut ... Respondent

Mr. S.C. Naidu i/by C.R. Naidu & Co. for Petitioner.

Ms. Shobhna Gopal for Respondent No. 1.

Mr.H.V. Mehta for Respondent No. 2.

CORAM : F.I. REBELLO,J.
DATED : DECEMBER 23, 2004

P.C.

. Rule. Heard forthwith.

. The Petitioner employer by the present petition has prayed for setting aside the order dated 29.6.2003 whereby the application by Respondent No. 1 workman for compensation under the Workman's Compensation Act has been allowed. In brief the contention of the Petitioners is that the Respondent workman in the course of his employment met with an accident and in May, 2001 preferred an application before the Commissioner of Workman's Compensation. That application pursuant to recording of evidence came tobe allowed.

. Considering the nature of controversy, an opportunity was granted to the Petitioner to add Respondent No. 2 Employees State Insurance Corporation. The accident had occurred on 20.110.2000. The Officers of Respondent No. 1 had visited the establishment of the Petitioners on 17.1.2001 and came to the conclusion that the establishment of the Petitioner was covered with effect from 1.8.2000. The company was accordingly registered under the E.S.I.S. Act under Code No. 34/133/90. The direction to comply with the provisions was with retrospective effect from 1.8.2000. The Petitioners have paid all contributions as demanded by the officers of Respondent No. 2 from 1.8.2000. The case of the Petitioner further is that as the Respondent No. 1 was covered, he was requested to fill up and send the declaration i.e. form No. 1 and put his claim under E.S.I.S. Act. He refused to do so. The Petitioner thereafter has stated that the application form has been forwarded on 5.4.2001.

. Respondent No. 2 has filed affidavit of Mr. V.T. Prabhu, Insurance Inspector. In Paragraph 6 it is set out that if the establishment is covered under the Act then Insured person is not entitled to claim compensation under the Workman Compensation Act as the insured person is benefited under the E.S.I.S. Act. It is also contended that

the respondents with mala fide intention failed and neglected to register their factory under Section 2(a) of the Act and failed to pay contribution from 1.8.2000. It is pointed out that the question will have to be decided whether in such circumstances, Respondent No. 2 can be burdened with the liability and the Petitioner can be allowed to transfer the liability of Respondent NO. 2. There are various other averments regarding failure by the Respondent to comply with E.S.I. Act.

. The issue therefore, would be whether on account of subsequent coverage of establishment, the petitioner is not liable to pay and it is Respondent No'. 2 who is bound to pay the legal entitlement of Respondent No. 1. To my mind the issue is no longer res integra having been covered by the Judgment of the Apex Court in Bharagath Engineering Vs. R. Ranganayaki and another, (203) 2 Supreme Court Cases 138. The Apex Court therein was considering amongst others, meaning of expression "Insured Person". In that case, the application for insurance was made after accident resulted in a death of the workman. The establishment was registered after the said date. It is on the facts of that case, that the Apex Court was considering whether the persons so deceased before the coverage would be an insured person. On the consideration of the scheme of the

Act and Sections the Apex Court was pleased to hold as under :

> "When considered in the background of statutory provision, noted above, the payment or non-payment of contributions and action or non-action prior to or subsequent o the date of accident is really inconsequential. The deceased employee was clearly an "insured person", as defined in the Act. As the deceased employee has suffered an employment injury as defined under Section 2(8) of the Act, and there is no dispute that he was in employment of the employer, by operation of Section 53 of the Act, proceedings under the Compensation Act were excluded statutorily....."

. It will therefore, be clear that even if the establishment is not covered and if by subsequent order the establishment is covered it will cover the period within which the workman suffered injury or died, consequent to the injury and would be entitled to the benefits under the E.S.I.S. Act. Having said so, the authority under the Workman's Compensation Act would have no jurisdiction to entertain the claim. To that extent, the impugned order will have to be set aside.

. Having said so and as the Respondent NO. 1 is covered by the provisions of the E.S.I. Act, he will be entitled to the benefits payable under the E.S.I.S. Act. T?he learned counsel for the respondents drew my attention to Section 68 of the ESIS Act to contend hat they are entitled to claim compensation from the employer i.e. Petitioner No. 5 herein. This is issue which cannot be gone into today as Respondent No. 2 has not made any demand on the Petitioner. It will be open to the Respondent No. 2 if in law they are entitled, to make such demand under Section 68. Considering that it is the Respondent Workman who has suffered injury and is entitled to the benefit which has not yet been received, Respondent No. 2 is directed to constitute a Board for medical examination of Respondent No. 1 within the period of three months from today and thereafter to take steps to make payments within the period of two months thereafter. In the event any documentation has to be supplied by the petitioner or Respondent No. 1, Respondent No. 2 to forthwith issue direction to both Petitioner No. 1 and Respondent No. 2 and on such directions being issued, Petitioner and Respondent No. 2 to comply with the said directions.

. Rule made absolute accordingly in terms of

Prayer Clause (a) and with further directions as contained in this order. No order as to costs.

. Personal Secretary to issue authenticated copy of this order.

(F.I. REBELLO,J.)

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